

24 MAY 2000



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

Daniel R. McClure
THOMAS, KAYDEN, HORSTEMEYER & RISLEY LLP
100 Galleria Parkway, Suite 1500
Atlanta, Georgia 30339

In re Application of	:	
JONGSMA, Maarten, et al.	:	
U.S. Application No.: 09/445,480	:	
PCT No.: PCT/NL98/00352	:	DECISION ON PETITION
International Filing Date: 18 June 1998	:	TO REVIVE ABANDONED
Priority Date: 18 June 1997	:	APPLICATION UNDER 37
Attorney's Docket No.: 252003-1040	:	CFR 1.137(b)
For: A METHOD FOR PLANT PROTECTION	:	
AGAINST INSECTS OR NEMATODES	:	

This decision is issued in response to applicants' "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) filed on 18 January 2000. Applicants have submitted the required petition fee.

BACKGROUND

On 18 June 1998, applicants filed international application PCT/NL98/00352 which claimed a priority date of 18 June 1997 and which designated the United States. On 23 December 1998, a copy of the international application was transmitted to the United States Patent and Trademark Office ("USPTO") by the International Bureau ("IB").

On 08 January 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. This Demand was filed prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the IB) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 20 December 1999 (18 December 1999 was a Saturday).

On 06 December 1999, applicants filed a Transmittal Letter for entry into the national stage in the United States which indicates that it was accompanied by, among other materials, a copy of the international application. The fee calculation portion of the Transmittal Letter indicates that \$1,758 in fees were required (\$840 as the basic national fee, \$130 as the surcharge for filing the declaration after the 30 month deadline, \$450 for inclusion of extra total claims, \$78

for inclusion of an extra independent claim, and \$260 for inclusion of a multiple dependent claim). However, the Transmittal Letter was not accompanied by a check in payment of these fees, nor did it contain an authorization to charge a Deposit Account for the fees.

On 18 January 2000, applicants filed the Petition For Revival considered herein.

On 09 February 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States for failure to pay the basic national fee within 30 months of the priority date.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c), page 700-93 of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, a copy of the international application had previously been transmitted by the IB, and the Petition For Revival filed on 18 January 2000 was accompanied by a payment of the basic national fee. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 20 December 1999. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition For Revival was accompanied by a payment in the amount of \$1,210 for the petition fee. Item (2) is satisfied.

As for item (3), the Petition to Revive states that the "entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." Item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition For Revival is granted.

CONCLUSION

Applicants' Petition For Revival is **GRANTED**.

The Notification Of Abandonment mailed on 09 February 2000 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision, specifically, for issuance of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an oath or declaration of inventors in compliance with 37 CFR 1.497(a) and (b).



Leonard Smith
PCT Legal Examiner
PCT Legal Office

RMR/LS:rmr



Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459